

Maurer School of Law: Indiana University Digital Repository @ Maurer Law

Articles by Maurer Faculty

Faculty Scholarship

1929

The Conflict of Laws Restatement with Oregon Notes (Chapter 3, Topics A, B)

Bernard C. Gavit

Indiana University School of Law

Follow this and additional works at: <http://www.repository.law.indiana.edu/facpub>



Part of the [Conflict of Laws Commons](#)

Recommended Citation

Gavit, Bernard C., "The Conflict of Laws Restatement with Oregon Notes (Chapter 3, Topics A, B)" (1929). *Articles by Maurer Faculty*. Paper 1115.

<http://www.repository.law.indiana.edu/facpub/1115>

This Article is brought to you for free and open access by the Faculty Scholarship at Digital Repository @ Maurer Law. It has been accepted for inclusion in Articles by Maurer Faculty by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact wattn@indiana.edu.



LAW LIBRARY
INDIANA UNIVERSITY
Maurer School of Law
Bloomington

OREGON LAW REVIEW

Vol. VIII

APRIL, 1929

No. 3

THE CONFLICT OF LAWS RESTATEMENT WITH OREGON NOTES

(Chapter 3, Topics A, B)*

BERNARD C. GAVIT

Chapter 3

TOPIC A. JURISDICTION IN GENERAL

Section 43. As used in this Subject, the word jurisdiction means the power of a state to create rights which under the principles of the common law will be recognized as valid in other states.¹

Comment:

(a) A sharp distinction exists between jurisdiction, as the word is used in this Subject, and the power of a state to create rights that will be recognized within its own territory.

Illustration:

(1) A court, being empowered by the statutes of its state, enters judgment against an absent foreigner, over whom it has no jurisdiction. The judgment in the absence of constitutional limitations

* The text of the Restatement is copyrighted by the American Law Institute and is reprinted here by permission. In annotating Sections 43-469 of the Restatement of Conflict of Laws the annotator has gone through the Oregon reports case by case. This fact is mentioned for the purpose of explaining the extent of annotations, and as prefacing the assertion that they purport to contain all of the Oregon cases. It is quite likely that some cases have been missed, for it has been impossible (and in fact would be impracticable) to read every word of every case.

It will be found that a large number of cases are cited under the sections on "Jurisdiction" (Sections 43-125) which in truth involve no question of conflict of laws; but they have been cited because the court was apparently applying the standards of jurisdiction as fixed by the conflict of laws to a local situation, and because, also, the local standard necessarily has the background of the "due process of law" guaranteed by the Federal Constitution. Results, as far as jurisdiction is concerned, are the same in practically all cases, either under the 14th amendment or the common law principles of conflict of laws.

may be valid within the state, though it will not be recognized as valid in another state.

(b) The creation of a right may be either the creation of a new right, or the change of an existing right, or the abolition of an existing right.

(c) The recognition of rights by other states does not necessarily mean recognition by all other states. It means recognition by states, generally, which accept the system of the common law as the basis of their law.

(d) By recognition is not meant enforcement. As is seen in Section, any state not compelled by a constitution to enforce valid foreign rights may refuse such enforcement, and will so refuse in certain classes of cases, even though it recognizes the validity of such rights.

Illustrations:

(2) A Mohammedan subject of the British Crown, domiciled in India, marries according to his law four wives, and has one son by the second wife. He changes his domicile to England and dies. The English law will recognize the validity of his marriage in India and consequently the legitimacy of his son, and will pass property to the son as next of kin, but it will not enforce the right of the wife and will therefore not permit her to take a wife's share of the property.

(3) A is a shareholder in the B Company. The B Company is a corporation organized in state X by the law of which all shareholders are liable to the amount of the par value of their shares to creditors joining in a creditors' bill against the shareholders. A is domiciled in state Y. Creditors of the company file a creditor's bill in Y against A. A has been taxed on his shares in Y; but the courts of Y refuse to entertain the bill on the ground that the remedy provided by the law of X cannot properly be enforced by any machinery available in Y.

Oregon Notes

¹ No Oregon case has been found discussing Jurisdiction under the principles of Conflict of Laws.

Section 44. The Constitution of the United States prevents the States of the United States from exercising power if they have no jurisdiction.¹

Comment:

(a) If a State attempts to exercise power by creating rights which it has no jurisdiction to create, its action is in violation of the Fourteenth Amendment to the Constitution of the United States and is void in the State itself.

Special Note: While there is generally no attempt to state statutory or constitutional principles in this Subject, the general principle here stated is so important that it must be dealt with. In cases brought before the Supreme Court of the United States questions of jurisdiction frequently present themselves as questions arising under the Constitution; and the Court, while it usually points out that the reason for its decision is lack of jurisdiction, is, nevertheless, deciding a constitutional question. Such cases include important judicial discussions of the subject of jurisdiction and it is impossible properly to deal with that subject in the United States without considering the constitutional questions.

Illustrations:

(1) A court, as directed by the statutes of its State, renders judgment against a citizen of another State, over whom it has no jurisdiction; under the Constitution, this judgment is not "due process of law," and is invalid even in the State which rendered it.

(2) A sheriff of State X, having an execution against A, levies on A's property in State Y, an adjoining State, brings the property into X, and sells it at sheriff's sale to B. The court in X holds B's title good. On appeal, the Supreme Court of the United States will hold that the levy on execution was not "due process of law."

(3) A, domiciled in State X, is driving his car through State Y on his way home on the taxing day of Y (the day on which taxes for the fiscal year are assessed), and a tax is laid on the car by the taxing officers in Y. The exaction of this tax deprives A of property without due process of law.

(b) The principle here stated does not apply to the recognition by a State of a right created in a foreign state, not acting within its jurisdiction as defined in this Subject. The Constitution of the United States would not necessarily prevent such recognition by any State against any person within its jurisdiction.

(c) The principle here stated perhaps does not apply to the recognition by a State of a right created in another State, though that State had no jurisdiction to create the right. In the absence of action by the Supreme Court of the United States on this point, no opinion is expressed upon it in the restatement of this Subject.

Oregon Notes

¹ Accord *O. & C. R. R. Co. v. Save Co.*, 23 Or. 386, 394 (1893); *Hood River Lumbering Co. v. Wasco Co.*, 35 Or. 498, 57 Pac. 1017 (1899); *Nottage v. City* 35 Or. 539, 58 Pac. 883 (1899); *King v. Portland*, 38 Or. 402, 63 Pac. 2 (1900); *Hughes v. Portland*, 53 Or. 370, 100 Pac. 942 (1909); *State v. Standard Oil Co.*, 61 Or. 438, 123 Pac. 40 (1912); *Stadelman v. Miner*, 83 Or. 348, 155 Pac. 708, 163 Pac. 585, 163 Pac. 983 (1917); *Endicott Johnson & Co. v. Multnomah County*, 96 Or. 679, 190 Pac. 1109 (1920); *Brown v. Silverton*, 97 Or. 441, 190 Pac. 971 (1920); *Smith v. Cameron*, 106 Or. 1, 210 Pac. 716 (1922); *Re Harper Irrigation Dist.*, 108 Or. 598, 216 Pac. 1020 (1923); *Lauderback v. Multnomah Co.*, 111 Or. 681, 226 Pac. 697 (1924); *Hamilton v. Rudeen*, 112 Or. 268, 224 Pac. 92 (1924); *George v. City*, 114 Or. 418, 235 Pac. 681 (1925).

Cf. Cordrey v. Steamship "Bee," 102 Or. 636, 201 Pac. 202 (1922); (the court says in this case that the sufficiency of notice is a legislative question).

Cf. Bank v. Richardson, 34 Or. 518, 524, 54 Pac. 359 (1899), "The rule requiring the property of a non-resident in an action on a money demand to be seized under a writ of attachment, and thus brought under the control of the court before any steps are taken looking to the publication of the summons, is wholly a judicial, and not a legislative requirement," citing *Pennoyer v. Neff*, 95 U. S. 714. The latter case involved the validity of the judgment in a second state: the principal case involved its validity only in Oregon. *Pennoyer v. Neff* was decided under the common law doctrines of the Conflict of Laws; *Bank v. Richardson* should have been decided under the 14th Amendment. The result, of course, would be the same. State jurisdiction may also, of course, be limited by the commerce clause. See *Western Union Tel. Co. v. Hurlburt*, 83 Or. 633, 163 Pac. 1170 (1917).

Section 45. Within its boundaries a state may exercise its

power so as to have legal effect abroad,¹ except in so far as such exercise of power is contrary to the principles of the common law that govern jurisdiction, or to a constitutional provision limiting the power of the state, or to some treaty or other formal act to which the state is a party. The boundaries of a state are determined by political fact.²

Comment:

The principles of the common law limiting jurisdiction are considered throughout this Subject. In so far as the common law embodies the principles of Public International Law it is not fully considered in this Subject. The limitation of a state's power over ambassadors and public vessels of another state and over vessels in territorial waters is the most important limitation not discussed in this Subject.

The jurisdiction of a state is not limited by its own constitution, since the state may change its constitution; but in the case of a federation the jurisdiction of a member state may be limited by the federal constitution. Constitutional provisions are not considered in this Subject except in so far as they embody general principles germane to the Conflict of Laws.

A common example of the limitation of jurisdiction by treaty is an agreement between neighboring states as to the navigation of boundary rivers.³

Oregon Notes

¹ *Bergman v. Inman*, 43 Or. 456, 72 Pac. 1086, 73 Pac. 341 (1903) accord.

² *U. S. v. Tom*, 1 Or. 27 (1853) (as a political fact Oregon was not part of the U. S. prior to 1846). *Martin v. T'Vault*, 1 Or. 77 (1854) *semble*. *Baldro v. Tolnue*, 1 Or. 176 (1855) (the Provisional government of Oregon was a government in fact). *Leland v. City of Portland*, 2 Or. 46 (1862) (Provisional government had no title to land in the Territory). See *Eagle Cliff Fishing Co. v. McGowan*, 70 Or. 1, 137 Pac. 766 (1914) (actual dividing line between Washington and Oregon determines territorial jurisdiction of courts). *Alsos v. Kendall*, 111 Or. 359, 227 Pac. 286 (1924) (jurisdiction over fishing in Columbia River).

³ *Edwards v. S. S. Panama*, 1 Or. 418 (1861). (Territory of Wash. and State of Oregon had concurrent

jurisdiction as to pilotage on Columbia River). *State v. Stargess*, 9 Or. 537, 10 Or. 58 (1881), *semble*. *The Annie M. Small*, 2 Sawy. 226, Fed. Cas. No. 423 (1872), *semble*. *Neil v. Wilson*, 14 Or. 410 (1887), *semble*. *Schmit. v. Day*, 27 Or. 110, 39 Pac. 870 (1895) (division of jurisdiction between Oregon and United States in tract of land ceded to latter in Cascade Locks). *Astoria R. R. Co. v. Kern*, 44 Or. 538, 76 Pac. 14 (1904), (damage to piling in Columbia River). *State v. Nielsen*, 51 Or. 588, 95 Pac. 720 (1908); *State v. Catholic*, 75 Or. 367, 147 Pac. 372 (1915); *Alsos v. Kendall*, 111 Or. 359, 227, Pac. 286 (1926), (concurrent power with Washington to regulate fishing in Columbia River). *Franciscovich v. Walton*, 77 Or. 36, 150 Pac. 261 (1915); *Ljubich v. Western Cooperage Co.*, 93 Or. 633, 184 Pac. 551 (1919); *Garvin v. Western Cooperage Co.*, 94 Or. 487, 184 Pac. 555 (1919). (State bound by Treaties of U. S. with foreign countries). *Hume v. Mears*, 89 Or. 519, 174 Pac. 1156 (1918) (treaty between U. S. and Great Britain on patent rights controlling in litigation in Oregon).

Section 46. Except as stated in Section 45, the jurisdiction of a state extends over a vessel flying its flag on the high seas and its law regulates all acts done thereon.¹

Comment:

(a) "The law of the flag" is in the United States the law of the State in which the vessel is registered.

(b) Rights acquired on a vessel on the high seas are acquired under the law of the flag.

Illustrations:

(1) A man is killed on board a vessel on the high seas by the negligence of the master. The state of registry has a statute creating a cause of action for death by wrongful act. The person designated by the statute may bring action under the statute.

(2) A, a resident of state X, is declared insolvent under the law of X, and all his property assigned to B. A owns a vessel, registered in X, which is on the high seas at the time of the assignment. B is entitled to the vessel.

(c) Whenever in the Restatement of this Subject the jurisdiction of a state over its territory is spoken of, it is assumed to include jurisdiction on vessels flying its flag, unless the contrary is stated.

Oregon Notes

¹ This was assumed in *Grimberg v. Columbia Packers' Assoc.*, 47 Or. 257, 83 Pac. 194 (1905). Cf. *Pettyjohn v. Oregon Coal & Nav. Co.*, 58 Or. 392, 113 Pac. 438 (1911). *Hamilton v. North Pac. S. S. Co.*, 84 Or. 71, 164 Pac. 579 (1917), accord.

TOPIC B. THE SUBJECTS OF JURISDICTION

TITLE I. GENERAL PRINCIPLES

Section 47. Jurisdiction is exercised over a person or a thing by creating rights which affect the person or thing.¹

Comment:

(a) A person, in the sense in which the word is here used, is either a human being or an aggregate of human beings endowed by the law with capacity for possessing legal rights.

(b) Things are either immovable or movable. Immovables include land, things annexed to the land, and all interests in land. All other things are movable.

(c) Things are either tangible or intangible. A tangible thing is one which has physical substance. All other things are intangible.

(d) A tangible movable thing is a chattel.

Oregon Notes

¹ *Cook v. City of Portland*, 35 Or. 383, 58 Pac. 353 (1899), *semble*. *Bergman v. Inman*, 43 Or. 456, 72 Pac. 1086, 73 Pac. 341 (1903); *Title Ins. & Trust Co. v. N. W. Tele. Co.*, 88 Or. 666, 173 Pac. 251 (1918) accord.

TITLE II. JURISDICTION OVER PERSONS

Section 48. A state has jurisdiction over a person:

(a) If he is within the territory of the state;¹

(b) If he is domiciled in the state, although not present in the state; or

- (c) If he has consented or subjected himself to the exercise of jurisdiction over him, either before or after the exercise of jurisdiction.²

Comment:

Examples of the exercise of jurisdiction over a person are given throughout this and the following chapter.

Oregon Notes

¹ *Aldrich v. Anchor Coal Co.*, 24 Or. 32, 32 Pac. 756 (1893); *Foshier v. Narver*, 24 Or. 441, 34 Pac. 21 (1893); *Schmit v. Day*, 27 Or. 110, 39 Pac. 870 (1895) accord. See also the cases cited under Sections 79-102, *infra*.

² *Cf. Johnson v. Seaborg*, 69 Or. 27, 137 Pac. 191 (1914), (foreign corporation in hands of receiver could not comply with foreign corporation statute as to business done prior to receivership, and involved in suit in question. See Sections 157, 185-193, *infra*.)

Section 49. A nation or state which in the law of nations has standing as a nation has jurisdiction over its citizens or subjects, wherever they may be.¹

Comment:

(a) Only such governments as are recognized as nations by the law of nations can rightfully, by that law, exercise protection or control over their nationals abroad.

(b) In federated states the federation alone is usually recognized as a nation by other nations. In such states the federation alone can exercise jurisdiction over its absent subjects or citizens. The constituent states have no such jurisdiction.

Illustrations:

(1) A, a citizen of the United States and of Massachusetts, leaves Massachusetts and is present in France and becomes domiciled there. The United States may levy an income tax upon him; Massachusetts has not jurisdiction to do so.

(2) A, a subject of the British crown, born and formerly domiciled in Victoria, now domiciled in France, is sued in Victoria and judgment is given against him by default. An action is brought in England upon the judgment. The action will be dismissed on the ground that the court in Victoria had no jurisdiction over A.

Oregon Notes

¹ *Cowenia v. Hannah*, 3 Or. 465 (1869), (British subject's rights in Oregon determined by Treaty of 1846).

TITLE III. JURISDICTION OVER THINGS

Section 50. An immovable thing is subject to the jurisdiction of the state within the territory of which it is located.¹

Oregon Notes

¹ *Manifold v. Sewall*, 11 Or. 67 (1883); *Wilson v. Shiveley*, 11 Or. 215 (1884); *Bank v. Richardson*, 34 Or. 518, 54 Pac. 359 (1899); *Egan v. North American Loan Co.*, 45 Or. 131, 76 Pac. 774 (1904); *Starkey v. Lunz*, 57 Or. 147, 110 Pac. 702 (1910); *Cunningham v. Friendly*, 70 Or. 222, 139 Pac. 928, 140 Pac. 989 (1914); *Montesano Lbr. Co. v. Portland Iron Wks.*, 78 Or. 53, 152 Pac. 244 (1915); *Robinson v. Scott*, 81 Or. 20, 158 Pac. 268 (1916); *Rieger v. Harrington*, 102 Or. 603, 203 Pac. 576 (1922) accord.

And see cases cited under Sections 67, 77, 103, 106, 112, *infra*.

Section 51. A chattel is subject to the jurisdiction of a state within the territory of which it is, except as stated in Sections 52 and 53.¹

Comment:

(a) The exercise of jurisdiction over property in transit is greatly limited by the Commerce Clause and other clauses of the Constitution of the United States. The consideration of these limitations is beyond the scope of this Subject.²

Illustration:

(1) Wheat shipped from State X to market in State Y is passing through an intermediate State Z. It cannot be taxed in Z.

(b) A document is a chattel; and the document (as distinguished from any obligation contained in it) is subject to the jurisdiction of the state within whose territory it is.

The document may be a written communication of information, like a letter, or it may be the memorandum of a legal transaction, or a written contract; or it may, like a bill of lading, embody a chattel, or like a bond or a promissory note, it may em-

body an obligation. Whether of one sort or of another, the document is a chattel.

Illustrations:

(2) A document, produced in evidence in a suit, is alleged to be forged. The judge before whom it is produced may order it to be impounded.

(3) A deed of land situated in state X is delivered in state Y. The grantor claims that it contains a mistake. The court in Y, where the deed still is, may seize the deed and order its reformation. The effect of the reformation of the deed upon the title to the land depends upon the law of X.

Oregon Notes

¹ Cf. *Goodwin v. Morris*, 9 Or. 322 (1881), (apparently contrary to this rule in result, but admitting the validity of the rule). *Webb v. Nickerson*, 11 Or. 382 (1884), (seizure for forfeiture by Indian agent on Indian reservation justified under U. S. statute). *Bergman v. Inman*, 43 Or. 456, 72 Pac. 1086, 73 Pac. 341 (1903); *Marshall Hardware Co. v. Multnomah Co.*, 58 Or. 469, 115 Pac. 150 (1911); *Montesano Lbr. Co. v. Portland Iron Wks.*, 78 Or. 53, 152 Pac. 244 (1915); *Cordrey v. S. S. Bee*, 102 Or. 636, 201 Pac. 202 (1922); *Spitzer v. "Annette Rolph,"* 110 Or. 461, 218 Pac. 748, 223 Pac. 253 (1924) accord.

² See, *Calender Nav. Co. v. Pomeroy*, 61 Or. 343, 122 Pac. 758 (1912). And see cases cited under Sections 67, 77, 103, 104, 107, 112, 113, *infra*.

Section 52. If a chattel belonging to a person who is not a citizen of or domiciled in the state, is brought into the state without his consent, the state has no jurisdiction over his title to the chattel until he has had a reasonable opportunity to remove it or until the period of prescription in the state has run.¹

Special Note: This Section is not supported by a great body of authority, though there is no authority against it. See Commentary. It represents the opinion of a considerable majority of the Advisers, though some of them dissent from it.

Comment:

(a) A state in which a chattel is has jurisdiction to deal with it in any way that does not divest the owner's title.

Illustration:

(1) A crate of peaches is stolen from the owner in New Jersey and taken into New York. There they begin to decay and are destroyed by public authority, in accordance with the law of New York, as endangering the health of the public. The owner has no legal ground of complaint.

(b) A state in which a chattel is may not divest the owner's title unless:

(i) The owner is a citizen of or domiciled in the state; or

(ii) It was in the state when the owner acquired title or he allows it to remain there after having a reasonable opportunity to take it out of the state; or

(iii) The owner allows it to be taken into the state; or

(iv) The owner places it in the hands of a bailee without express stipulation against taking it into the state, and the bailee takes it there; or

(v) It remains in the state after the period of prescription has run in the state.

Illustrations:

(2) A crate of peaches is taken into New York by a carrier, and is sold by public authority, in accordance with the law of New York, as it is in danger of spoiling and becoming unwholesome.

(a) If the owner consented to the peaches being taken to New York, title passes to the purchaser. (b) If they were stolen and delivered to the carrier by the thief, title does not pass to the purchaser.

(3) A thief steals a watch from the owner, who kept it in state X. The thief carries it to state Y, and sells it to a stranger domiciled in Y. Y has no jurisdiction by its law of market overt to pass title to the purchaser.

(4) The owner of a horse lends it to a friend on the agreement that it shall not be taken out of state X. The friend takes the horse into state Y. The law of Y permits the creditor of one in possession of a chattel to levy upon the chattel. A creditor of the friend cannot levy upon the horse in Y.

(5) A steals a horse from B in state X and carries it into state Y. The horse remains in Y for seven years before it is discovered

by the owner. By the law of Y the thief has acquired title by prescription to the horse. A sells the horse to C who takes it into X. B brings suit against C in a court of X for the recovery of the horse. The court would give judgment for C.

Oregon Notes

¹ *Cf. Goodwin v. Morris*, 9 Or. 322 (1881). The facts of the case do not disclose the exact situation, but apparently the correctness of this rule is denied. *Cf. Eli Bridge Co. v. Sachman*, 124 Or. 592, 265 Pac. 435 (1928), which apparently admits (by way of dictum) the correctness of this rule.

See cases cited under Sections 103, 280, 288, 302, *infra*.

Section 53. To the extent to which title to a chattel is merged in a document by the law which governed the chattel at the time the document was issued, title to the chattel is exclusively subject to the jurisdiction of the state which has jurisdiction over the document.¹

Comment:

Chattels shipped by a carrier are at common law merged in a bill of lading; and goods deposited in a warehouse are by the Uniform Warehouse Receipts Act merged in the warehouse receipt.

Illustration:

(1) Chattels are shipped from England on an English vessel, consigned to New York, and a bill of lading issued against them. By the law of England the title to the chattels is merged in the bill of lading. This bill is attached in New York by a creditor of the owner of the bill, before the goods reach New York. The attachment is valid by the law of New York but invalid by the English law. The goods are subject to the attachment.

Oregon Notes

¹ No Oregon case has been found involving or discussing this rule. See Section 281, *infra*.

Section 54. A state has jurisdiction over a chattel outside its boundaries only

(a) If the chattel is located within the state, but is temporarily outside it; or

- (b) If the chattel was removed from the state without the consent of the owner;¹ or
- (c) If the title to the chattel is merged in a document which is subject to the jurisdiction of the state.

Comment:

(a) A temporary absence from the state where it is habitually kept does not remove a chattel from the jurisdiction of that state, though it may also be within the jurisdiction of the state in which it is.

Illustrations:

(1) A cow usually kept in a barn in state X is sent temporarily to pasture in state Y. It may be taxed in X.

(2) An automobile usually kept in a garage in state X is driven into state Y, is injured there, and is taken to a garage there for repairs. It is to be returned to X as soon as it is repaired. It is taxable in X.

(3) Chattels in process of manufacture in state X are sent into state Y to be dyed there and returned to X, and while they are in Y the owner dies. They are assets of the estate in X.

(b) If the chattel is removed from the state without the consent of the owner, the state into which it is taken does not have jurisdiction over it. (Section 52.) As it has already been within the jurisdiction of the former state, it so continues.

(c) To the extent to which title to the chattel is merged in a document by the law which governed the chattel at the time the document was issued, a state in which the chattel is located does not have jurisdiction over it unless it has jurisdiction over the document. (Section 53.)

Oregon Notes

¹ Cf. *Bergman v. Inman*, 43 Or. 456, 72 Pac. 1086, 73 Pac. 341 (1903).

See Sections 103, 280, 288-302, *infra*.

Section 55. No state has jurisdiction over intangible things except as stated in Sections 56, 57, 58 and 59.¹

Comment:

Intangible things, having no position in space, cannot ordinarily be subjected to the jurisdiction of a state because of any territorial power of the state over them. If any state has jurisdiction over an intangible thing it must be by reason of some special circumstance which connects the intangible thing to the state.²

Oregon Notes

¹ *Poppleton v. Yamhill Co.*, 18 Or. 377 (1890); *Hollister v. Hollister*, 85 Or. 316, 166 Pac. 940 (1917), (trust fund in N. Y.; Oregon has no jurisdiction); *Title Ins. & Trust Co. v. N. W. Tele. Co.*, 88 Or. 666, 173 Pac. 251 (1918), (bonds and trust funds in California; California has jurisdiction; Oregon has not); *Endicott-Johnson & Co. v. Multnomah Co.*, 96 Or. 679, 190 Pac. 1109 (1920); *Michelin Tire Co. v. Hurlburt*, 121 Or. 110, 254 Pac. 196 (1927) accord. Cf. *Marshall Hardware Co. v. Multnomah Co.*, 58 Or. 469, 115 Pac. 150 (1911). Cf. *State v. First Nat. Bank*, 61 Or. 551, 123 Pac. 712 (1912), (escheat of bank deposits; depositor not dead. See Sect. 58, *infra*).

² A franchise granted by a State may be taxed by the state, *Western Union Tel. Co. v. Hurlburt*, 83 Or. 633, 163 Pac. 1170 (1917).

See cases cited under Sections 104, 109, 110 and 114, *infra*.

Section 56. Where a right is, by the law which created it, embodied in a document, the right is within the jurisdiction of the state which has jurisdiction over the document.

Comment:

A bond or a negotiable instrument, a so-called specialty, is a document embodying a right; and the state which has jurisdiction of the document has jurisdiction of the right.

Illustrations:

(1) A promissory note for the payment of \$100 is made in state X by A, payable in the same state to B. B indorses the note to a bank, which holds it in its vaults in state Y. The obligation embodied in the note is subject to the jurisdiction of Y.¹

(2) A bond is kept in a deposit box in state X; but just before the taxing day in X it is sent temporarily into state Y to escape taxation. It is taxable in X. (See Section 54.)²

Oregon Notes

¹ *Ankeny v. Multnomah Co.*, 3 Or. 388 (1872), *semble*. Cf. *Ankeny v. Multnomah Co.*, 3 Or. 386 (1872), note and creditor out of state, but note payable in the

state: held, "an indebtedness within this state." This case is reversed in 4 Or. 271 (1872), ("We think 'indebtedness within the state' has reference to the place of residence of the creditor rather than the place of payment of the debt"). *Title Ins. & Trust Co. v. N. W. Tel. Co.*, 88 Or. 666, 173 Pac. 251 (1918) accord.

² *Johnson v. Oregon City*, 2 Or. 329 (1868), but on the theory that the situs of the debt was with the creditor. (The question was as between two local taxing units.) See Sections 103, 108, 112, and 282, *infra*.

Section 57. (1) Shares in a corporation are subject to the jurisdiction of the state in which the corporation was organized.

(2) The certificate of stock is subject to the jurisdiction of the state within whose territory it is.

(3) To the extent to which the state in which the corporation was organized merges the share in the certificate, the share is exclusively subject to the jurisdiction of the state which has jurisdiction over the certificate.¹

Comment:

(a) The state in which the corporation was organized has jurisdiction to determine the title to and disposition of the shares.

Illustrations:

(1) A is the owner of shares in the X corporation. B, a creditor of A, attempts to attach A's shares on the books of the corporation by process served on the corporation. A assigns the shares to C. The law of the state in which the corporation was organized determines whether B prevails over C.

(2) A dispute arises between two persons as to the ownership of a share; the courts of the state in which the corporation was organized have jurisdiction to determine the controversy.

(b) Any question involving title to or disposition of the certificate is subject to the jurisdiction of the state where the certificate is.

Illustration:

(3) A certificate indorsed in blank is given to a broker for sale; the broker pledges it. The title to the certificate, as between

the owner and the pledgee, depends on the law of the state where the certificate was at the time of the pledge.

(c) At common law the state of incorporation will order the transfer of the shares on the books of the corporation to the holder of the legal title to the certificate; and to that extent the title to the shares depends upon the title to the certificate.

Illustration:

(4) A certificate of stock in an American corporation is in England, is there attached and sold and the title to it passes by English law to the purchaser. The State in which the corporation was organized regards the purchaser as entitled to have the shares transferred to him on the books.

(d) Under the Uniform Stock Transfer Act, which is in force in many states, title to a share can be transferred only by delivery of the certificate.

Oregon Notes

¹ See *Thomas v. Gilbert*, 55 Or. 14, 101 Pac. 393, 104 Pac. 888 (1909).

Cf. Beard v. Beard, 66 Or. 526, 133 Pac. 795 (1913), (it does not appear whether or not the certificate was within the state).

See Sections 109, 195-205 and 282, *infra*.

Section 58. Intangible things may be so connected with a locality that they are subject to the jurisdiction of the state with whose territory they are connected.

Comment:

(a) A judgment is subject to the jurisdiction of the state whose court rendered it.

(b) The good-will of a business is subject to the jurisdiction of the state within whose territory the business is carried on.

(c) A bank deposit is subject to the jurisdiction of the state within whose territory the bank is located.¹

Oregon Notes

¹ *State v. First Nat. Bk.*, 61 Or. 551, 123 Pac. 712 (1912), accord.

Section 59. A business, and all the intangible assets employed in carrying on the business, when dealt with as a unit, are subject to the jurisdiction of the state in which the business is carried on. If the business is carried on in more than one state, the in-

tangible assets are allocable to one or the other state in such a way as gives a fair result.¹

Comment:

(a) The intangible assets of the business include all intangible things which are used or intended to be used in any direct way in carrying on the business. They include also, in the case of a money-lending business, all notes and securities which embody and secure the loans.

Illustration:

(1) A, domiciled in state X, employs an agent in state Y through whom he carries on the business of lending money. The notes of the borrowers and documents securing the notes, wherever kept, are subject to the jurisdiction of Y.

(b) The intangible assets employed in carrying on a business do not include investments of surplus earnings or other securities not directly employed in the business.²

Illustration:

(2) The A Company carries on the insurance business in state X. The company is obliged to keep a legal reserve of \$1,000,000. This is invested in United States bonds which are kept in state Y. The bonds are subject to the jurisdiction of Y.

(c) This Section is applicable only when the intangible assets of a business are dealt with as a unit; as, for instance, for purposes of taxation and for purposes of transmission and administration on death or bankruptcy of the owner of the business. They do not include individual dealings with particular items.

Special Note: All the Advisers agree in the case of taxation, but some dissent in other cases.

Illustration:

(3) A, domiciled in state X, employs an agent in state Y, through whom he carries on the business of lending money. The notes and securities taken by the agent in Y are kept by A in his safety deposit box in X. A endorses and delivers one of the notes to B in X. This is a valid transfer of the note according to the law of X, but not according to the law of Y. B gets good title to the note.

(d) When it is necessary to allocate among several states the assets of a business carried on in those states, it may be done in any way which gives a fair result.

Illustrations:

(4) The A Telegraph Company possesses property, all employed in the business, of the value of \$1,000,000. It does business in ten states. Its length of wire in each state is employed as a measure of the value of its intangible assets in the state, the wire constituting substantially all its tangible property. If there is no evidence that this method is unfair, it properly allocates the intangible assets.

(5) The A Refrigerator Car Company possesses property of the value of \$1,000,000, all intangible except its cars, which are worth \$300,000. It employs its cars on the rails of various railroad companies in ten states. The railroad mileage over which its cars run in each state is employed as a measure of the value of the intangible assets in the state. It is shown that this results in giving to state X a taxable value of all assets equal to ten times the value of the average number of cars in the state. The allocation of intangible assets to X is not legal.

Oregon Notes

¹ Cf. *Marshall Hardware Co. v. Multnomah Co.*, 58 Or. 469, 115 Pac. 150 (1911); and *Callender Nav. Co. v. Pomeroy*, 61 Or. 343, 122 Pac. 758 (1912). *State v. Standard Oil Co.*, 61 Or. 438, 123 Pac. 40 (1912), accord.

See *Endicott-Johnson & Co. v. Multnomah County*, 96 Or. 679, 190 Pac. 1109 (1920), approving this rule, but construing the Oregon statute in question as not authorizing taxation under the facts of the case.

See also *Michelin Tire Co. v. Hurlburt*, 121 Or. 110, 254 Pac. 196 (1927), (following the *Endicott-Johnson* case).

² *Title Ins. & Trust Co. v. N. W. Tel. Co.*, 88 Or. 666, 173 Pac. 251 (1918) accord.

TITLE IV. JURISDICTION OVER STATUS

Section 60. A state has jurisdiction over the status of persons domiciled within the state.¹

Comment:

For definition of status and for the principles governing the exercise of jurisdiction, see Chapter 5.

Oregon Notes

¹ *McLennan v. McLennan*, 31 Or. 480, 50 Pac. 802, 38 L. R. A. 863; *McFarlane v. McFarlane*, 43 Or. 477, 73 Pac. 203 (1903); *Kalyton v. Kalyton*, 45 Or. 116, 74 Pac. 491, 75 Pac. 332 (1903) accord.

And see cases cited under Sections 115-154, *infra*.